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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1954

Nos. 357 and 358

CIRACO MANEJA, et al.,
Petitioners,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Respondent.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Petitioner,

vs.

CIRACO MANEJA, et al.,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.

REPLY BRIEF FOR PETITIONERS CIRACO MANEJA, ET AL.

RICHARD GLADSTEIN,
NORMAN LEONARD,
240 Montgomery Street, San Francisco 4, California,
Attorneys for Petitioners Ciraco Maneja, et al.

EWING SIBBETT,
240 Montgomery Street, San Francisco 4, California,
Of Counsel.

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I.

THE AGRICULTURE EXEMPTION.

Waialua's entire argument on this point is based upon the premise that Waialua is a "farmer", and that therefore *none* of its employees is entitled to the benefits of the Act. But both the premise and the conclusion drawn from it are erroneous: Waialua is not solely a "farmer"; and even if it were, that fact alone would not grant it an exemption for *all* of its employees.

1. Waialua is not solely a farmer.

While the statutory definition of agriculture (Section 3[f])[1] refers to "farming in all its branches . . . and any practices . . . performed by a farmer . . .", it nowhere defines or states what is a farmer; except insofar as that may be inferred from the language used to describe "farming", i.e., "the cultivation and tillage of the soil . . . the production, cultivation and harvesting of any agricultural . . . commodities . . ." Thus, the statute uses the word "farming" in its generally accepted sense: raising agricultural commodities from the soil. And it may be presumed that the word "farmer" was used in the same sense: one who engages in farming, that is, in raising agricultural commodities from the soil.[2] To the

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[1]The statute, of course, is the Fair Labor Standards Act of 1938. (52 Stat. 1060; 29 USC 201, *et seq.*)

[2]A farmer is defined as:

"A cultivator of ground . . .; one who tills the soil; one who conducts or manages a farm; an agriculturist; a husbandman." (***Webster's New International Dictionary***) or

"One who follows the occupation of farming; one who manages a farm of any kind; an agriculturist; as the *farmer* raises wheat to sell." (***Funk & Wagnall's New Standard Dictionary.***)

Cf. *Addison v. Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 618:

extent that Waialua engages in such activities, it conducts farming and to the extent that certain of its employees are actually engaged in agricultural work, the District Court granted the agriculture exemption.[3]

But to the extent that Waialua engages in other functions and activities, it is not a farmer, and workmen engaged in these other functions are not farmhands. Normally, a farmer does not operate a railroad, normally a farmer does not operate carpenter shops, welding shops, electric shops, extensive machine shops, or roundhouses. Normally a farmer does not employ fulltime machinists, locomotive engineers, carpenters, railroad section hands, painters, plumbers, chemists, and the like. To the extent that Waialua engages in these activities it is not a farmer; to that extent it has left the agricultural field and has become a processor or a railroader or a manufacturer.

In the brief which the American Farm Bureau Federation proposes to file herein as amicus curiae, the characteristics of farming (as contrasted with processing, manufacturing, maintenance or railroading) are set out with commendable clarity:

> ". . . farm operations, unlike industrial operations, cannot be regulated by the clock. The coming and going of the seasons do not await the pleasure of man. Sunshine, rain, humidity and warmth are not yet subject to man's control. The time to plant and

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"After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

[3]Waialua concedes (Brief for Waialua, p. 38) that the District Court exempted from the coverage of the Act the "field activities": preparation of the soil for planting, planting, ratooning, cultivating, fertilizing, irrigating and harvesting.

> the time to harvest are determined by the whims of nature. Calves, lambs and pigs are born at all hours of the day and night. Livestock must be fed and cows must be milked each day including Saturdays and Sundays. Plant and animal growth continues around the clock. Successful farming demands long hours of labor on certain days and few hours of labor on others. Frost, heat, humidity, rainfall, relative day and night temperatures, presence or absence of pests or the incidence of disease or illness are the practical factors governing these demands. No limitation or regulation of the farmer's hours is possible in an efficient farming operation." (Brief for American Farm Bureau Federation as Amicus Curiae, pp. 12-13.)

This points up the underlying reason why the statutory exemption is applicable to employees engaged in "field activities", while it does not, and should not, exempt those who operate a mill, shop or railroad.

Indeed, since the ultimate end of all of Waialua's activities is the sale of a manufactured product—sugar refined at the cooperatively owned plant in California—it seems more reasonable, if Waialua insists that an arbitrary classification of its status be made, to say that Waialua is a manufacturer whose agricultural activities are merely preliminary to the major industrial processes which follow. This result would appear to be more realistic than the proposition that the whole complex of activities shown by the record here may be classified *solely* as farming.

But this Court is not required to choose either of these two extremes. For it has long recognized that viewed

realistically and, at least for the purposes of this statute, businesses may take on more than one "characteristic". (*Phillips v. Walling*, 324 U.S. 490.) In such a case the exemption's applicability depends upon the nature of the work performed by the employee involved. Here the District Court's finding that Waialua's operations took on characteristics other than those of a farmer was palpably correct. And the point chosen by the District Court to separate the agriculturally exempt from the non-exempt employment was neither unreasonable, arbitrary, nor capricious: the point at which the "field work" was completed by the delivery of the loaded cane cars to the fixed railroad track,[4] from which point on the product was no longer handled by field hands, but rather by skilled railroaders and thereafter by trained factory technicians.

This Court, in *Addison v. Holly Hill Fruit Products, Inc.*, 322 U.S. 607, 611, quoted with approval from Mr. Justice Holmes' dissenting opinion in *Louisville Gas &*

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[4]Waialua complains (Brief for Waialua, p. 44, n. 27) that the District Court's finding that the company distinguished beween harvesting and mainline transportation is "misleading" because, it says, Waialua also distinuishes between harvesting and field transportation. But certainly Waialua cannot complain because the court drew the line where it did, giving Waialua the benefit of the greater rather than the lesser exemption. It must never be forgotten that, as we have already pointed out, the District Court did grant Waialua a very substantial exemption for its farming operations: it excluded from the coverage of the Act those employees actually engaged in agricultural activities.

In connection with social security withholding taxes (49 Stat. 620; 42 USC 301, et seq.), Waialua made deductions for substantially all its employees save the field hands who were considered to be "agricultural labor" within the meaning of Section 210(f) of that Act (42 USC 410[f].) And the point of demarcation which the company itself chose was the *point at which the cane was delivered to and loaded* on the mainline railroad cars. (R. 624-626.)

Electric Co. v. Coleman, 277 U.S. 32, 41, language which is clearly pertinent here:

> "Looked at by itself without regard to the necessity behind it, the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision . . . must be accepted unless we can say that it is very wide of any reasonable mark."

2. Even if Waialua were solely a "farmer", that fact alone would not make all of its employees exempt.

The exemption which Waialua here claims (Section 13[a][6]) does not depend upon how *an employer's* operation may be characterized, but rather applies only to "*any employee* engaged in agriculture". Thus, no matter how broad is the definition of agriculture, and no matter how vehemently Waialua asserts that *it* is a farmer, the question yet remains: Are these 40 petitioners engaged in agriculture? Is a man whose sole occupation is the driving of a railroad locomotive engaged in agriculture; or one who does nothing but repair locomotives, trucks, or tractors; or one who does nothing but electrical repair work or welding or machine shop work or carpentering? Viewed in this light, the significance of this Court's language in *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 761, becomes plain:

> "Economic progress, however, is characterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory

produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. In this way functions which are necessary to the total economic process of supplying an agricultural product, become in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it. Thus, the question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity. The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. But the maintenance man in a power plant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done by the farmers. The production of power and the manufacture of fertilizer are independent productive functions, not agriculture."

The District Court quite correctly found that in operating the mill, railroad and machine shops, Waialua's employees engaged in specialized, separate and independent productive functions which were not a part of the agricultural operation. Certainly, if the railroad, or the shops had been operated under a separate ownership from the agricultural fields,[5] there would be no question but what

[5]Instead of under separate departments—which was admittedly the case here (R 381-390.)

the employees here involved would be entitled to the benefits of the statute. Thus in one aspect, this case really presents the question of whether unitary ownership should deprive the employees of those benefits.

To accept Waialua's contentions here would lead to some startling results. It would mean that the more the "independent productive activities" came under single ownership with the farm, the fewer would be the workers covered by the statute. It would mean that in Puerto Rico, for example,[6] where railroad and maintenance workers are now covered, they would lose that coverage if the "centrale" were to buy up the independent "colonos". This is literally to stand the Act on its head and to make it topsy-turvy. It is to impose the added costs of overtime compensation on small economic units, while relieving their larger and more powerful competitors from such costs.

In other words, Waialua is arguing that the Act applies to railroad and maintenance workers only where those workers are employed by independent employers who sell their services to a "farmer". But if the "farmer" is large enough to buy up these independent operations and put them under one ownership then, according to Waialua, the workers who had theretofore enjoyed the benefits of the statute would automatically lose them. As we have seen,[7] this contention was made and

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[6]See the discussion of the land ownership system in the sugar industry in that territory. (Brief for Waialua, p. 60.)

[7]Brief for Petitioners, p. 41.

squarely rejected by the Court of Appeals for the First Circuit in *Calaf v. Gonzalez*, 127 F.2d 934 (C.A. 1). Nor is they anything in this Court's decision in the *Farmers Reservoir* case (as Waialua suggests) that gives substance to the argument. On the contrary, this Court in that case appeared to be concerned less with the fact of separate ownership than with the nature of the economic function performed by the employees, the degree of its specialization, and its separateness from the work normally done by farmhands.[8]

In a certain, and highly artificial, sense it can be said that railroad employees who haul sugar cane are working "for" a farmer. It can also be said that the welders, carpenters, machinists, etc., involved in this proceeding are working "for" a farmer in the sense that they are paid by the "farmer". However, just as the fact that an activity, even if it be regarded as "necessary" to agriculture, has been held by this Court not to *be* agriculture (*Farmers Reservoir* case, *supra*, 337 U.S. at 759-60), so the fact that the worker is paid by the "farmer" rather than paid by somebody else, should not deprive a worker, otherwise entitled, of the benefits of the Act.

The amicus brief of the American Farm Bureau Federation already referred to, sets forth the underlying reasons behind the statutory exemption of farm employees:

> "Usually the farm employee (and often his family with him) lives upon the farm. Often he has the privilege of producing on the farm commodities for

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[8]See the Brief for the Secretary of Labor as Amicus Curiae, pp. 25-26, which contains a careful discussion of the significance of the independent ownership of the irrigation company in the *Farmers Reservoir* case.

Co. v. McComb, 337 U.S. 755, it was argued that the only way to hold that the employees who tended the company's irrigation system (all of which was located within the state of Colorado) were engaged in the production of goods for commerce, was to say that their work in supplying water to the farmers (who shipped their produce in interstate commerce) was necessary to the production of farm products. And then it was argued that since that production was agricultural, the 13(a)(6) exemption must apply. This Court held that the argument, ingenious as it sounded, was based upon a "misconstruction" of Section 3(j) of the Act and that

> ". . . the conclusion that the work is *necessary* to agricultural production does not require us to say that it *is* agricultural production."[30] (327 U.S. at 759.)

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[30]This Court spelled out the argument in a footnote:

"The fallacy of the notion that an exemption carries with it all occupations whose nexus with interstate commerce is the exempted occupation is demonstrated by authority as well as by logic. In Boutell v. Walling, 327 U.S. 463, 90 L. ed. 786, 66 S. Ct. 631 (1946), for example, the question was whether men who were employed by a service company to service trucks carrying goods in interstate commerce were exempt, under § 13(b)(1), as the employees of an interstate carrier subject to regulation by the Interstate Commerce Commission. Their only connection with commerce was their work on the trucks of the interstate carrier. The Court divided as to whether the employees were themselves employed by the carrier within the meaning of the Motor Carrier Act and, therefore, exempt. But there was no suggestion in either of the opinions in the case that, if not employed by the carrier, they were nevertheless exempt because their only connection with interstate commerce was through an enterprise which was itself exempt.

"In only one case brought to our attention was a contention presented similar to that made here. In Dize v. Maddrix (CCA 4th Md.) 144 F.2d 584 (1944) aff'd. 324 U.S. 697, 89 L. ed. 1296, 65 S. Ct. 895 (1945), the local manufacture of boxes was held to be within the Act because the boxes were used by fishermen to ship their fish in interstate commerce. The fishermen were exempt under a specific exemption in the Act

his own consumption as well as other privileges. His interest in the farm cannot be limited to some eight, nine or ten hours each day or to a forty-hour or five-day week. The hours worked vary greatly with the seasons. Also, on many days there is no way to measure the number of hours the farm employee has devoted respectively to his employer's interests and to his personal interests. In most farm operations there is no satisfactory basis for the keeping of time records. Farm employees are actually on the farm available when needed or in the event of an emergency, around the clock." (Brief for American Farm Bureau Federation as Amicus Curiae, p. 22.)

Such factors, persuasive enough in the case of "employees engaged in agriculture", are totally absent in the case of the employees involved in this proceeding.

3. **The legislative history demonstrates that the agriculture exemption is not applicable here.**

Waialua stresses that, as the bill which later became the Fair Labor Standards Act journeyed through Congress, the definition of agriculture became broader and broader (Brief, pp. 45-54). However, Waialua ignores the fact that the *exemption*, which it here claims, was never conceived to be anything but an "employee exemption" and that throughout the legislative history it was the clear intent and understanding of Congress that the exemption was to apply only to *employees* engaged in agriculture. Certainly there was noting to indicate that, no matter how broadly Congress defined agriculture, it intended to include within the scope of the phrase "any *employee* engaged in agriculture", employees who were fulltime machinists, welders, carpenters, locomotive engineers, etc.

IV.

THE COMMINGLED WORK WEEK.

Waialua argues that an employee who performs non-exempt work must nonetheless be denied the benefits of the Act in any workweek in which he performs some exempt work, or at least that a "tolerance" should be permitted which would deprive such an employee of benefits unless he devoted a "substantial part" of his time to non-exempt activities. (Brief for Waialua, pp. 83-84.)

But this argument overlooks the fact that the exemptions here in question, unlike the exemptions in the situations cited by Waialua, contain their own "built in" tolerance. Thus, the agriculture exemption, where it applies, is broad enough to include work "incident to or in conjunction with" farming operations (Section 3[f]) and the processing exemption, where it applies, covers incidental work performed at the place of processing (Section 7[c]). Waialua is in effect asking the court to give it a tolerance over and above that which Congress has already written into the statute and is asking the court to broaden the scope of the legislative exemption.

Waialua's argument also overlooks the fact that as to those of its employees who were actually engaged in agricultural and related activities, the District Court granted it the full exemption to which it was entitled (*supra*, pp. 3 and 5), and that the processing exemption was granted not only for employees actually working on the processing

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covering fishing, and it was argued that the manufacturer of the boxes should therefore be exempt as 'fishing' because its only connection with commerce was through fishing. The argument was rejected summarily." (337 U.S. at 760, n. 7.)

Clearly, if Congress had intended that all employees of a farmer, irrespective of their function, were to be exempted, "it would have been so easy to have said so" (*Baltimore & P. R.R. Co. v. Grant*, 98 U.S. 398, 403) by making the exemption apply in terms to the employees of designated *employers*.[9]

In a recent decision, the Court of Appeals for the First Circuit said:

> "The difference in terminology employed by Congress strongly indicates that Congress differentiated as to whether employees were to be exempt because they were employed by a particular employer, employed in a particular capacity, employed in a particular industry, or employed in connection with a particular industry. Thus, where the words 'any employee of a carrier by air * * *'; 'any employee employed by any retail or service establishment * * *'; 'any employee of a street, suburban, or interurban electric railway * * *'; and 'any employee of an employer engaged in the business of operating taxicabs' are used, it is the nature of the employer's business which is determinative as to whether or not a particular employee is to be included within the exemption. Similarly Congress intended that more than the physical operations of the employee should be considered when it used such language as 'any employee employed * * * in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways * * *' and 'any employee employed in connection with the publication of any weekly, semiweekly, or daily newspaper * * *.' But when Con-

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[9] As we have pointed out (Brief for Petitioners, p. 30), in other sections of the Act Congress did just that. See also Brief for the Secretary of Labor as Amicus Curiae, p. 35, n. 5.

> gress used such language as 'any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman * * *'; 'any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish * * *'; 'any switchboard operator * * *'; 'any employee employed as a seaman * * *'; 'any employee employed in planting or tending trees, cruising, surveying, or felling timber * * *'; and 'any employee employed in the canning of any kind of fish, shellfish or other aquatic forms of animal or vegetable life, or any by-product thereof'; it did not intend that the employee's status would be determined by the business of the employer, but rather that whether or not the employee was exempt depended on the capacity in which the particular employee was acting." (*Mitchell v. Stinson*, 217 F. 2d 210, 214-215 [C.A. 1].)

Clearly the exemption here involved—"any *employee* engaged in agriculture"—is of the character last described by the court, so that the issue here depends "on the capacity in which the particular employee was acting."

Waialua is asking this Court to extend the exemption by implication, and to read the phrase "any employee *engaged in agriculture*" as meaning "any employee *employed by a farmer* irrespective of whether the employee is engaged in railroading, carpentry, welding, etc."

In *Addison v. Holly Hill Fruit Products, Inc.*, 322 U.S. 607, this Court pointed out that Congress provided for eleven specific exemptions from the controlling provisions of the Act, that such exemptions were spelled out in the

greatest of detail, and (at 617) that "exemptions made in such detail preclude their enlargement by implication".[10]

The legislative history quoted so copiously in Waialua's brief is searched in vain to find a single expression indicating that *employees* performing the actual operations revealed by this record to have been performed by these petitioners, were intended to be excluded from the benefits of the Act. As a matter of fact, when debate in the Congress touched upon problems akin to these here presented, the discussion showed an awareness that manufacturing operations were not to be exempted from the Act under the guise of "agriculture". Thus, Senator Black, speaking of an employer who might manufacture shirts in a factory located on a cotton farm, said:

> "The mere fact that he has such a plant on his farm would not make the manufacturing of shirts, for instance, a farming operation. It would still be a manufacturing operation. The same reasoning would apply to any other process of manufacturing." (81 Cong. Rec. 7658.)

As this Court said in the *Farmers Reservoir* case: ". . . the legislative history confirms what *a natural reading* of the language of the agriculture exemption would indicate" (337 U.S. at 764): that is, that the exemption was intended to be applied to employees who in common parlance may be regarded as farm hands. It was never intended to be applied to employees who engaged in the

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[10]One page later in its opinion this Court reiterated this concept in almost identical words: "The details with which the exemptions in this act have been made preclude their enlargement by implication." (*Ibid.*, at 618.)

specialized manufacturing, transportation and maintenance activities engaged in by petitioners here.

II.

THE PROCESSING EXEMPTION.

The error of Waialua's position on this phase of the case stems from its assertion of the proposition that because it admittedly engages in some "processing" within the meaning of Section 7(c) of the Act, all petitioners here are thereby excluded from the overtime provisions of the statute. But it is clear that neither the language nor purpose of the 7(c) exemption, nor the adjudications made thereunder, justify the granting of so sweeping an exemption.

Here, as in connection with the 13(a)(6) phase of the case, it must be remembered that the District Court granted Waialua a substantial exemption, holding that the work of those employees which "takes place in the mill, in connection with the operation of the processing machinery and activities closely and intimately connected therewith" is not covered by the Act. The District Court also exempted the work of employees engaged in weekend repair and maintenance of mill machinery (97 F. Supp. at 223, 224). This eliminated from the case a substantial number of employees. But Waialua is not satisfied and argues that the exemption should be extended to cover the work of employees engaged in operating the mainline railroad, in repairing and maintaining that railroad, in generating power used for non-exempt as well as exempt

activities, and in repairing and overhauling the mill during the annual three month "off season" shutdown. Waialua's argument is unsound for a variety of reasons.

1. On its face the processing exemption applies only where not one, but two conditions are met: (a) the employer must be engaged in the described processing activity, and (b) the employees must be employed in the place where the employer is so engaged. Thus, it is not enough that the employer is engaged in processing. The activities of the employees[11] and the place where they perform them must be examined in order to determine whether or not the exemption applies. Unless the employees themselves are engaged in processing and are engaged in such activities at the place where the processing takes place, they are not to be denied the benefits of the statute.

It is clear that petitioners here who are engaged in operating and maintaining the mainline railroad are not engaged in processing; nor are the carpenters, welders, electricians, plumbers and other craftsmen.[12] These op-

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[11]See *Walling v. W. D. Haden Co.*, 153 F.2d 196, 199 (C.A. 5), cert. den. 328 U.S. 866: "The entire act is pervaded by the idea that what each employee actually does determines its application to him." See also Brief for Petitioners, pp. 30, 55-57.

[12]The verb "process" is defined as: "To treat by a process, specifically, to heat, by steam or otherwise, so as to cook or sterilize". (*Funk & Wagnall's New Standard Dictionary.*) The noun "process" is defined as: "A course or method of operations, natural or artificial, incident to the accomplishment of a result; a systematic series of action in the production of something, as a metallurgical process". (*Funk & Wagnall's New Standard Dictionary.*) "Processing" is defined as: "Arrangement, performance or utilization of a process or processes as in a factory; the actual work or operations involved therein". (*Webster's New International Dictionary.*)

erations are not so intimately connected with processing activities as to justify depriving the employees of their statutory benefits. Indeed, one could start with any admitted "processing" operation and trace it either backward or forward in the industrial complex of which it is a part, and which, of course, would exclude the necessary transportation activities. But this does not make the transportation or other activities a part of processing and does not justify extending the exemption so that it will embrace the transportation workers or the craftsmen. There must be a cutoff point somewhere and the District Court's limitation of the exemption to the work in the mill in connection with the operation of the processing machinery and activities closely related thereto, is reasonable and proper and is consistent with the judicial authority on the question.[13]

In a recent opinion the Court of Appeals for the First Circuit recognized that while employees engaged in transportation, plant production and record keeping, performed activities "closely related and directly essential to" an exempted operation, they were not thereby deprived of the benefits of the Act because such activities, despite that relationship, "cannot be said to be part of" the exempted activity (*Mitchell v. Stinson*, 217 F. 2d 210, 217 [C.A. 1]).

2. This conclusion is compelled not only by the necessity for a strict construction of the exemptions to this "remedial" statute, but also by the very language of the 7(c) exemption itself. Congress expressly limited this

[13]Brief for Petitioners, pp. 47-61; Brief for the Secretary of Labor as Amicus Curiae, pp. 47-59.

exemption to those employees working at the "place of employment" where the processing occurs. Obviously Congress did not intend to permit an employer, by arguing that other activities were "necessary" or "incidental" to processing, to deprive employees engaged in non-processing activities, of the benefits of the Act. Congress adopted the same cutoff point for the exemption—based upon place of performance—as the District Court did. To ignore this clear legislative expression is not only to overturn the fair and reasonable determination of the trier of facts, but is to permit the limited 7(c) exemption to swallow up the entire Act.

3. For as already pointed out,[14] the employees with whom we are here concerned are not engaged at the place where the processing occurs. That place is the mill. But the craftsmen work in separate and distinct shops: carpentry, electric, welding, plumbing, etc.; the railroad men work all along fifty-six miles of railroad track; the railroad repair men work in the roundhouse. None of these is the "place" where processing occurs. Waialua's argument that its "entire premises" may be included as the place where its processing operations occur, is simply an invitation to this Court to read out of the Act the words of limitation so carefully placed there by the Congress—words whose purpose, of course, was to prevent the exemption from nullifying the rest of the statute.

The courts have without exception refused to adopt that kind of argument and, consistent with the repeated admonitions of this Court to construe the Act broadly and

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[14]Brief for Petitioners, p. 53; Brief for the Secretary of Labor as Amicus Curiae, p. 52.

the exemptions narrowly, have limited the application of the 7(c) exemption to those employees engaged in actual processing and have denied it to all others.[15] Waialua's attempted distinction of the cases (Brief for Waialua, p. 67) involves a tortured analysis of them, disregards the basic rules of statutory construction which are required to be applied here, and fails utterly to take into account the limitation of the exemption itself: that is, it is applicable only to employees engaged at the place where the processing occurs.

4. As to the few employees producing power who actually work in the mill building,[16] the record is clear that the power these employees produce is used by Waialua for activities *not exempted* as well as for the exempt processing activities. Under such circumstances the courts have repeatedly held that the exemption does not apply to such employees.[17] Bearing in mind the purpose of the statute as well as the restrictive language of the 7(c) exemption, this approach not only makes sense but is the only one which can be adopted without utterly emasculating the Act.

5. Clearly, during the three months of the year when the mill is closed down, no processing at all takes place and there can be no reasonable basis for claiming that an

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[15]Brief for Petitioners, pp. 55-57; Brief for the Secretary of Labor as Amicus Curiae, pp. 55-56.

[16]Although in parts of the building—i.e., the power house and the fireroom—separate and distinct from the place where the actual processing occurs.

[17]Brief for Petitioners, p. 55; Brief for the Secretary of Labor as Amicus Curiae, p. 54.

exemption exists.[18] In addition to the cases already cited[19] we call attention to the recent decision of the First Circuit referred to by the Secretary of Labor[20] which squarely supports the position that we have here taken: *Mitchell v. Stinson,* 217 F. 2d 210 [C.A. 1]. In that case it was held that since the dead season activities "are not parts of [the exempt activity], the District Court was correct in holding that such employees do not come within the exemption . . ." (*Ibid.,* 217).

6. Waialua's argument on this phase of the case is an effort to persuade this Court to disregard the plain language of the exemption, to overrule a host of judicial decisions supporting the view of both the employees and the Secretary of Labor, and to reverse the traditional policy of narrowly construing exemptions to this remedial statute. That argument cannot be sustained without at the same time so broadening the 7(c) exemption as to jeopardize the benefits which the Act confers upon great numbers of industrial, transportation, and other types of employees who are not themselves engaged in processing.

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[18]The language of Section 7(c) limits the exemption to the employees at the place of employment where the employer "*is* so engaged". This clearly denotes that a present (not past or future) engagement in processing is a condition of the exemption. The repairs made during the weekend shutdown were regarded by the District Court as not involving such an interruption of processing as to destroy the force of the exemption. The three months "dead-season" is something else again.

[19]Brief for Petitioners, pp. 58-60 and n. 29.

[20]Brief for the Secretary of Labor as Amicus Curiae, p. 57.

III.

THE VILLAGE MAINTENANCE WORKERS.

Waialua stresses that the employees engaged in the maintenance of its village were employed to "serve the needs" of the other employees and their families (Brief for Waialua p. 74), and argues that such servicing, even though those other employees were engaged in commerce or the production of goods for commerce, does not bring these village maintenance employees within the coverage of the Act.

This argument completely overlooks the stipulated fact that at the time the company was organized "there was no established community having housing or other services or facilities for living in or near the [sugar producing and processing] area . . . to accommodate the employees whom the plantation *needed for its operations. As a consequence, it became necessary for the Plantation to construct houses . . . to serve the needs of the required number of plantation employees and their families*" (R. 118).[21]

Thus the fact is that the maintenance of the village was (and is) an act of necessity, not of convenience, grace or favor. Without the village there would be no employees and without the employees there would be no plantation. It is as simple as that.[22]

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[21]None of the work in "village maintenance" was new construction. It was all performed in connection with already existing facilities. (R 180.)

[22]While other persons may, and some do, live in the village, and while Waialua's employees are not required to live there—and Waialua makes much of these points (Brief for Waialua, pp. 75-

The village was created and it exists only to give housing to Waialua's employees, and if the necessity for such housing disappeared, so would the village. Therefore, it is apparent that the maintenance and upkeep of the village does have such a "close and immediate tie with the process of production" (*Kirschbaum v. Walling*, 316 U.S. 517, 525), as to bring the employees engaged in such activities within the coverage of the Act. Without the village, Waialua would not have its labor force,[23] and without its labor force, it could not produce goods for interstate commerce. Thus the relationship between the village and its maintenance on the one hand, and the production of goods for interstate commerce on the other, is direct, immediate and clear.

Nor do the cases upon which Waialua relies compel a contrary conclusion.

McLeod v. Threlkeld, 319 U.S. 491, considered only the question of whether the employee there was "engaged in commerce". It did not consider the extent of the coverage of the phrase here involved, "engaged in . . . the production of goods for commerce," which carries with it the broad definition of the word "produced".[24]

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76)—the fact is that of the almost 3000 employees and pensioners of Waialua, only 16 (less than ¾ of 1%) live off the plantation. (R. 120-121.) To say, in circumstances where over 99% of the employees live in company dwellings, that the village is "really a municipality", is to substitute form for substance.

[23]Or at least 99¼% of its labor force.

[24]Section 3(j) of the Act provided at the time in suit:
"An employee shall be deemed to have engaged in the production of goods if such employee was employed . . . in any process or occupation necessary to the production thereof . . ."
(Cf. *Mitchell v. H. B. Zachry Co.*, 127 F.Supp. 377 [D. N.M.].)

In *Wilson v. Reconstruction Finance Corp.*, 158 F. 2d 564 (C.A. 5), cert. den. 331 U.S. 810, plaintiffs were employed by the Defense Plant Corporation, as firemen, guards and operators of a water-plant servicing a housing project operated by their employer. In this project there lived employees of the Dow Magnesium Corporation and the Dow Chemical Corporation, producers of chemicals which were shipped in interstate commerce. Plaintiffs' contention that they were covered by the Act was rejected because *their* employer was not engaged in commerce or in the production of goods for commerce.

> "The independence of the employer of the plaintiffs and the employers of the housing occupants insulates the plaintiffs from the status of producers of goods for commerce." (158 F. 2d at 565.)

That is not the case here. Here, the owner of the village is also the producer of goods for commerce. Indeed, the Fifth Circuit, citing this Court's decisions in *Kirschbaum v. Walling*, 316 U.S. 517, and *Borden v. Borella*, 325 U.S. 679, recognized that:

> "Had plaintiffs been firemen, guards and water-plant operators of the chemical plants during the production of chemicals for commerce, their claim would have more merit." (158 F. 2d at 565.)

The two District Court cases cited by Waialua (*Morris v. Beaumont Mfg. Co.*, 84 F. Supp. 909 [W.D. S.C.] and *Coomer v. Durham*, 93 F. Supp. 526 [W.D. Va.]), present factual situations not at all comparable to the case at bar. In both of them the housing was located in cities or towns which had a substantial independent existence

apart from the company housing.[25] Furthermore, contrasted with the fact that 99¼% of all of Waialua's employees live in Waialua Village (or at least on the plantation) are the facts that in the *Morris* case "less than one-half of the defendant's employees reside in . . . dwellings [furnished by defendant] . . . and on the average more than one-half of them lived in homes owned by themselves or rented from other parties" (84 F. Supp. at 910) and that the same situation obtained in the *Coomer* case.[26] Here, only 16 out of 3000 do not rent from Waialua.

Support for the position urged by the employees here is to be found not only in the cases already cited,[27] but also in *Hawkins v. E. I. DuPont DeNemours & Co.*, 192 F. 2d 294 (C.A. 4), and *Tobin v. Union Nat. Bank of Little Rock*, 112 F. Supp. 702 (E.D. Ark.), and the cases upon which they relied. In the former it was held that workers employed in a plant cafeteria were engaged in

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[25]In the *Morris* case the city was Spartanburg, South Carolina (84 F.Supp. at 910), and in the *Coomer* case the towns (Keokee, Exeter, Andover and Big Stone Gap, Virginia, and Glenbrook, Kentucky) were not "isolated communities, but are near other communities and are located on state highways which are linked with the federal highway system and are accessible by automobile and bus transportation." (93 F.Supp. at 528.)

[26]For instance, at one operation there were 547 employees of whom only 16 (i.e., less than 3%) lived in company houses. The remainder lived in their own homes or in houses which they rented from other persons. All told, there were 3251 employees of whom 1334 (slightly over 40%) lived in houses rented from the company. The other 60% of the employees lived in their own homes or in houses rented from others. (93 F.Supp. at 528.)

[27]Brief for Petitioners, pp. 61-70.

the production of goods for commerce.[28] In the *Tobin* case it was held that maintenance, custodial and janitorial employees of a national banking institution likewise are engaged in the production of goods for interstate commerce.[29]

While it is true that Congress has not chosen to regulate wages and hours in industries *affecting* interstate commerce, this is no reason for a narrow construction of the language which it has used to express its intent on the commerce coverage of the Act. It was clear to this Court long ago that:

> ". . . the purpose of the Act was to extend federal control in this field throughout the farthest reaches

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[28] ". . . the provision of sustenance for the workers who operate machines is as essential as the furnishing of power to the machines themselves and that the feeding of employees conveniently so that they need not leave the plant is an effective step in maintaining production. Basik v. General Motors Corp., 311 Mich. 705, 19 N.W.2d 142, 159 A.L.R. 966. Weight has been given to factory rules which require the workers to remain on the premises during the workday; see McComb v. Factory Stores Co., D.C. N.D. Ohio, 81 F.Supp. 403; and to the fact that in some cases the place of operation is so remote from populous settlements that the provision for food at the situs of the work is essential. Hanson v. Lagerstrom, 8 Cir., 133 F.2d 120; Consolidated Timber Co. v. Womack, 9 Cir., 132 F.2d 101; cf. Bayer v. Courtemanche, D.C. Conn. 76 F.Supp. 193; Kuhn v. Canteen Food Service, D.C. N.D. Ill., 77 F.Supp. 585; Tipton v. Bearl Sprott Co., D.C. S.D., Cal., 93 F. Supp. 496." (192 F.2d at 296.)

[29] It was pointed out that cases like *McLeod v. Threlkeld*, 319 U.S. 491, which did not consider this aspect of the statute but only the scope of the phrase "engaged in commerce", must be distinguished "because of the more restricted test applicable" to the latter phrase. (112 F.Supp. at 704.) The court evidently felt that cases like *Kirschbaum v. Walling*, 316 U.S. 517, and *Borden Co. v. Borella*, 325 U.S. 679, which were directly concerned with the extent of coverage under the phrase "engaged in . . . the production of goods for commerce", were controlling.

of the channels of interstate commerce." (*Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 567.)[29a]

In determining whether an employee is engaged in the production of goods for commerce, that is, whether he is employed "in *any* process or occupation necessary to the production thereof," it would seem that the same "practical considerations" (*Overstreet v. North Shore Corp.*, 318 U.S. 125) which enter into a determination of what constitutes commerce itself should govern.

Here, as we have seen, is a typical "company town": Less than 1% of Waialua's employees live elsewhere; without the village there would be no employees and without the employees there would be no production of goods for commerce. Practically speaking, the maintenance of the village is necessary to the production of goods for commerce; practically speaking, such maintenance has that "close and immediate tie" with production which should result, as the District Court held it did, in coverage.

Waialua's argument (Brief for Waialua, pp. 80-81) that if the work here in question is within the commerce coverage of the Act, then "by the same token" it is exempt under Section 13(a)(6), not only assumes the correctness of Waialua's position respecting the scope of the agriculture exemption, but overlooks the fact that this precise contention has heretofore been made to, and rejected by, this Court. In *Farmers Reservoir & Irrigation*

[29a]The view expressed in this, and related cases upon which petitioners rely, was confirmed just last month by this Court in *Mitchell v. Joyce Agency*, ___ U.S. ___; No. 230, October Term 1954; 21 L.W. 3218 (February 28, 1955).

machinery but for those whose activities were connected therewith and those who engaged in weekend repair and maintenance (*supra*, pp. 14 and 15). Here is tolerance aplenty.

To go beyond this and to deprive an industrial worker of all benefits in a given week because he may be called on to also perform tasks that fall within the 7(c) or 13(a)(6) exemption, is to read into those exemptions more than Congress intended to have there.

The position here urged by both the employees and the Secretary of Labor has been uniformly sustained by the courts,[31] and as the Secretary points out,[32] the cases cited by Waialua dealing with "tolerances" allowed in relation to other exemptions are not applicable here. The particularity with which the agriculture and processing exemptions are stated "preclude[s] their enlargement by implication." (*Addison v. Holly Hill Products Co.*, 322 U.S. 607, 617.)

The acceptance of Waialua's view would result in administrative (and judicial) problems of the most serious sort and courts would find themselves weighing minutes and hours to determine whether an employee did or did not perform a "substantial" amount of non-exempt work in a given workweek. The workweek is the unit most adapted to the proper administration of the Act (*Overnight Motor Transport Co. v. Missel*, 316 U.S. 572) and there is no occasion for any further fractionalization.

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[31]Brief for Petitioners, pp. 72-73; Brief for Secretary of Labor as Amicus Curiae, pp. 60-62.

[32]Brief for Secretary of Labor as Amicus Curiae, pp. 59, 64-65.

V.

CONCLUSION.

Of Waialua's almost 1200 employees (R. 36) something in the neighborhood of 250 are engaged in the occupations represented by the 40 petitioners here.[33] In other words, for over 75% of its working force, Waialua was granted either the 13(a)(6) or the 7(c) exemption by the trial court. It is only the 20% or 25% of its employees who are engaged in railroading; office, laboratory and warehouse work; repair and maintenance (carpentry, welding, painting, plumbing and the like) and a handful engaged in generation of power and working on by-products who are here claiming their statutory right to be compensated at one and one-half times their regular rate of pay for hours worked in excess of forty. This is not a case in which great numbers of farm workers are seeking coverage; it is a case in which a relatively small number of industrial workers and railroaders are claiming that they ought not to be denied what Congress said they should have.

Furthermore, in the case of some of these employees at least, Waialua had already placed them on a forty hour workweek schedule and was paying them such statutory overtime rates for hours worked in excess of that number,[34] but contends that it is not required to do so. (R. 37.)

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[33]Attached hereto as an appendix is a summary, taken from the record, of the number of employees in the various shops and engaged in the various activities here involved.

[34]This includes "most of the office staff and most of the warehouse employees" and "employees in the mill and in allied service shops . . . during the off season". (R. 37.) Also, it is to be noted that Waialua made deductions for withholding tax purposes pur-

A decision in Waialua's favor, therefore, will result in depriving these employees of wage benefits which they are currently enjoying. In other words, Waialua is asking this Court to tell it that it may pay some of its employees less than it is actually now doing.

That the judgment of the District Court which awarded statutory overtime benefits to this relatively small group of industrial and railroad workers is manifestly correct, is demonstrated not only by its own correspondence with the interpretations of the Act made by this Court, and by its correspondence with the views of the Secretary of Labor, but by the fact that at least three other courts have seen fit to cite it with approval and to follow it on three separate and distinct points.

In *Durkin v. Budd,* 114 F. Supp. 865 (N.D. Fla.), the views of the District Court herein on the scope of the agriculture exemption and the point at which agriculture ends and manufacturing begins (Point I, *supra*) were followed (114 F. Supp. at 868).[35] In *Romanca v. Meyer,* 114 C.A. 2d 375, 378, 250 P. 2d 347, 349, the California court cited the decision of the District Court herein in

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suant to the Social Security Law for substantially all of its employees save the field workers and that the point of demarcation was when the cane was delivered to and loaded on the mainline railroad cars. (R. 624-626; *supra*. p. 5, n. 4.)

[35]Conversely, a trial examiner of the National Labor Relations Board has recently refused to follow the opinion of the Court of Appeals in this case and has held the Labor Management Relations Act of 1947 (61 Stat. 163, 29 USC 141, et seq.) applicable to a truck driver employed on a Hawaiian sugar plantation despite the argument that he was engaged in agriculture. (*In re Olaa Sugar Co., Ltd.*, NLRB Case No. 37-CA-84 [Intermediate Report and Recommended Order, Jan. 20, 1955].) To the same effect see *In re Papeekeo Sugar Co.*, 59 NLRB 1532, and *Waialua Agricultural Co. v. United Sugar Workers*, 114 F.Supp. 243 (D. Haw.).

connection with the disposition of a problem relating to the production of goods for interstate commerce (Point III, *supra*), and in *Wyatt v. Holtville Alfalfa Mills, Inc.*, 106 F. Supp. 624 (S.D. Cal.), its views on the commingled workweek (Point IV, *supra*) were adopted.

The views expressed by the Court of Appeals on the contrary are not only inconsistent with this Court's interpretations of the statute and contrary to the Secretary of Labor's views but will, if permitted to stand, have a troubling effect upon the decisions of lower federal tribunals.

We have already pointed out[36] the important considerations of national policy which impel a reinstatement of the District Court's judgment.[36a] Only by such an order will the fulltime mechanics, carpenters, electricians, painters, railroad men, etc., receive the benefits of the Act to which they are so clearly entitled and only by such an order will the damage to the administration of the Act wrought by the Court of Appeals' decision be undone.

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[36]Brief for Petitioners, pp. 83-87.

[36a]Only last month this Court made an order reversing the judgment of a Court of Appeals (*Mitchell v. Joyce Agency*, 211 F. 2d 241 [C.A. 7]) and affirming the judgment of a District Court (*Durkin v. Joyce Agency*, 110 F. Supp. 918 [N.D. Ill.]) in a case arising under this statute. *Mitchell v. Joyce Agency*, ____ U.S. ____; No. 230, October Term 1954; 21 L.W. 3218 (February 28, 1955).

For the foregoing reasons the judgment of the Court of Appeals should be vacated and the judgment of the District Court reinstated.

Dated, San Francisco, California,
March 15, 1955.

Respectfully submitted,
RICHARD GLADSTEIN,
NORMAN LEONARD,
Attorneys for Petitioners
Ciraco Maneja, et al.

EWING SIBBETT,
Of Counsel.

(Appendix Follows.)

Appendix

		Number
1.	Railroad employees--a train crew consists of four men: an engine driver, a fireman, a front brakeman, and a rear brakeman. The company uses between 6 and 9 train crews, the average being 7 (R. 62)	28
2.	There is one Diesel engineer and one operator (R. 62)	2
3.	There is a pickup crew consisting of one locomotive driver and one brakeman (R. 62)	2
4.	There is one hostler and one engine wiper employed in the roundhouse (R. 63, 103)	2
5.	There are 10 crossing watchmen (R. 63)	10
6.	There are 7 men per shift employed in the fireroom (R. 89)	21
7.	There are 2 men per shift in the power plant (R. 93)	6
8.	There are 8 men employed in the machine shop (R. 94)	8
9.	There are 5 men employed in the welding shop (R. 95)	5
10.	There are 4 men employed in the blacksmith shop (R. 96)	4
11.	There are 3 men employed in the tinsmith shop (R. 97)	3
12.	There are 12 men employed in the canloading machine repair shop (R. 97)	12
13.	There are 7 men employed in the tractor repair shop (R. 98)	7

14.	There are 24 men employed in the garage (R. 98)	24
15.	There are 15 men employed in the electric shop (R. 101)	15
16.	There are 25 men employed in the carpenter shop (R. 101)	25
17.	There are 5 men employed in the paint shop (R. 102)	5
18.	There are 6 men employed in the plumbing shop (R. 103)	6
19.	There are 13 men employed as chemists (R. 103)	13
20.	There are 6 men employed in the concrete products plant (R. 103)	6
21.	There are 3 men employed in village maintenance (R. 277)	3
22.	There are 13 men employed in the warehouse (R. 108)	13
23.	There are 22 office workers (R. 108)	22
	Total	243

The record does not reveal the number of section hands or truck drivers.